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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 08.03.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal Nos.50 to 52 of 2006
and
WAMP Nos.95 to 101 of 2006

M/s.Angu Parameswari Textiles
Private Limited,
Rep. by its Managing
Director V.Marimuthu,
Sirumalai Road, Reddipatti Post,
Dindigul 624 003. ... Appellant in all WAs.

vs.

1. Chairman cum Managing Director,
Indian Bank, 69, Rajaji Salai,
Chennai-600 001.

2. Indian Bank,
Main Branch, Dindigul,
represented by its
Asst. General Manager,
Circle Office 100-101,
East Avanimoola Street,
Madurai 625 001.

3. The Chief Manager (Authorised Officer),
Indian Bank, Circle Office,
100-101 East Avanimoola Street,
Madurai 625 001.

4. The Registrar,
Debt Recovery Tribunal,
Kaveri Complex, Trichy Road,
Ramanathapuram, Coimbatore.

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5. Union of India, rep. by its
Joint Secretary to Govt.,
Ministry of Finance, New Delhi. ... Respts. in all WAs.

Appeals under Clause 15 of Letters Patent against the Order dated 5.12.2005, made in WPMP Nos.6211, 6212 and 6215 of 2005 in WP.No.5638 to 5640/05 on the file of this Court.

WPMP.No.6211 of 2005:- Petition filed to pass an order of interim injunction restraining the 2nd and 3rd Respondent Bank from Proceeding with the auction of the petitioners property mentioned in the schedule.

2. WPMP.No.6212 of 2005:- Petitions filed under Article 226 of the constitution of India to pass an order of injunction restraining the respondents, their men, agents or anybody claiming through them from in any manner interfering with the peaceful possession and enjoyment of the premises bearing lands in S.Nos.898/1B, 898/3, 901/6, 901/7 and 901/8 total extent of 8.9 acres covered under patta 1378 adjacent to sirumalai Road, Athayanatham Village, Dindigal Lands in S.Nos.978 /2E, 982/3C and 982/3D a total extent of 7.68 acres covered under patta No.178 adjacent to sirumalai Road, Athayanatham Village, Dindigul.

3. To pass an order of interim injunction restraining the respondents their men, agents or subordinates or any body claiming through them from interfering with the peaceful possession of the properties morefully set out in the schedule.

For Appellant : Mr.S.R.Sundar

For R-2 & R-3 : Mr.S.Rangasamy

For R-1 R-4 & R-5 : No appearance.

COMMON JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

In view of the limited issue raised and of the fact that the Writ Appeals have been filed against the interim order passed by the learned single Judge, we dispose of the main Appeals by this Judgment.

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2. Heard learned counsel for the appellant as well as respondents-2 and 3.

3. The appellant/writ petitioner, viz., M/s.Angu Parameswari Textiles Private Limited (rep. by its Managing Director V.Marimuthu), Dindigul, aggrieved by the auction proceedings initiated by the Indian Bank in respect of the loan amount, approached this court by filing W.P. Nos.5638, 5639 and 5640 of 2005. Along with the said Writ Petitions, they also filed W.P.M.P. Nos.6211, 6212 and 6215 of 2005, seeking for an order of injunction, restraining R-2 & R-3/Bank from proceeding with the auction of their property mentioned in the schedule. By order dated 21.02.2005, the learned single Judge granted injunction without any condition. When the said Miscellaneous Petitions came up for further hearing on 05.12.2005, after hearing both sides, the learned Judge made the injunction absolute on condition the petitioner pays 50% of the entire due outstanding under the impugned loan, 25% of which shall be paid on or before 05.01.2006 and balance 25% to be paid on or before 05.02.2006. In the same order, the learned Judge made it clear that in default of any one of the conditions, the injunction granted shall stand vacated automatically. Questioning the said order, the petitioner has filed the above Appeals.

4. While ordering notice to respondents-1 to 3 in the above Writ Appeals, First Bench of this Court, by order dated 02.02.2006, indicated that the appeals may be disposed of at the admission stage. In the same order, the Bench stayed the condition imposed by the learned single Judge relating to deposit and also directed respondents-1 to 3 not to take any further coercive step. At this stage, the matter is posted before us.

5. Learned counsel for the appellant heavily relied on the details such as principal amount, interest and the amount repaid by the appellant as well as the outstanding as on the date of filing of the Writ Petition. The relevant details are available in paragraph No.13 of the affidavit filed in support of the Writ Petitions. The said paragraph is extracted here-under:-

> "The petitioner states that the total principal availed for all the loans is Rs.523.25 lakhs and the total interest due up to 27.10.2002 is Rs.410.67 lakhs and the total amount payable together with the principal and interest is Rs.933.92 lakhs. The petitioner has paid the principal to the tune of Rs.366.67 lakhs and the interest to the tune of Rs.218.37 lakhs, which aggregates to Rs.585.04 lakhs. The petitioner states that they have paid the principal and interest to the tune of 62.64% and

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the balance outstanding as per the second respondent and the third respondent is only 348.88 lakhs, which is 37.36%."

6. No doubt, learned counsel appearing for the Bank disputes the above statement and to-day, he files a Memo before this Court. The said memo contains the following particulars:-

"Amount due as on 26-10-2002 ... Rs.3,48,87,476-93 P.
(Suit amount at DRT)

Balance as on 08-09-2004 ie., ... Rs.5,00,36,774-93 P.
SARFASI Notice date

Balance as on today ... Rs.7,51,83,311-00 P."
ie on 08-03-2006

7. Learned counsel appearing for the appellant has brought to our notice that in view of the balance outstanding is only Rs.348.88 lakhs, the amendment made to second proviso of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is not applicable to the respondents/Bank. According to him, in view of the fact that the appellant/textile is a sick industry and has approached the Board for Industrial and Financial Reconstruction (BIFR) and also of the fact that the matter is posted for further hearing on 22.03.2006, considering the grievance of the appellant, the interim order may be continued without imposition of any condition.

8. We have referred to the figures furnished by the Bank as well as the outstanding as per the accounts of the appellant/textile. Taking note of these aspects and of the fact that the Writ Petitions are pending and both the parties can very well project their respective claims at the time of final hearing of the Writ Petitions, we are of the view that ends of justice would be met by continuing the injunction order against the respondents by imposing the following conditions:-

(a) In modification of the order of the learned single Judge dated 05.12.2005 made in WPMP Nos.6211, 6212 and 6215 of 2005, the appellant/Textile is directed to pay Rs.75,00,000/- (Rupees seventy five lakhs only) to the 2nd respondent/bank, viz., Indian Bank, Main Branch, Dindigul (rep. by its Asst. General Manager, Circle Office 100-101, East Avanimoola St., Madurai 625 001).

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(b) Out of the said amount, the appellant is permitted to pay Rs.25,00,000/- (Rupees twenty five lakhs only) on or before 31.03.2006 and the balance of Rs.50,00,000/- (Rupees fifty lakhs only) on or before 30.04.2006.

In the case of failure on the part of the appellant to comply with any one of the conditions referred above, the respondents/bank are free to proceed further. It is made clear that the above direction is without prejudice to the stand of both the parties.

9. Writ Appeals are disposed of accordingly. Connected Miscellaneous Petitions are closed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman cum Managing Director, Indian Bank, 69, Rajaji Salai, Chennai-600 001.

2. The Asst. General Manager, Indian Bank, Main Branch, Dindigul, Circle Office 100-101, East Avanimoola Street, Madurai 625 001.

3. The Chief Manager (Authorised Officer), Indian Bank, Circle Office, 100-101 East Avanimoola Street, Madurai 625 001.

4. The Registrar, Debt Recovery Tribunal, Kaveri Complex, Trichy Road, Ramanathapuram, Coimbatore.

5. The Joint Secretary to Govt., Union of India, Ministry of Finance, New Delhi.

+ 1 cc to Mr.S. Rengasamy, Advocate SR No.11270
+ 4 ccs to Mr.K. Moorthy, Advocate SR No.11403

Writ Appeal Nos.50 to 52 of 2006 & connected Miscellaneous Petitions.

JE(CO)
SR/9.3.2006

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